

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VALDEZ BLACKMON,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION DIVISION OF
ADULT PAROLE OPERATION,
REGION 2; J. LARSON; JAMES
SCAVER; RAY POLIAKOFF;

Defendants.

No. C 12-0961 JSW (PR)

**ORDER OF DISMISSAL;
DENYING MOTION FOR
APPOINTMENT OF COUNSEL;
GRANTING LEAVE TO
PROCEED IN FORMA
PAUPERIS**

(Docket Nos. 2, 3)

INTRODUCTION

Plaintiff, a former parolee of the State of California, filed this pro se civil rights complaint under 42 U.S.C. § 1983 against parole officials. He is granted leave to proceed *in forma pauperis*. For the reasons discussed below, the complaint is dismissed without prejudice.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic

1 recitation of the elements of a cause of action will not do. . . . Factual allegations must
2 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*
3 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer
4 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se
5 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,
6 699 (9th Cir. 1990).

7 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:
8 (1) that a right secured by the Constitution or laws of the United States was violated, and
9 (2) that the alleged violation was committed by a person acting under the color of state
10 law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

11 LEGAL CLAIMS

12 Plaintiff alleges that Defendants revoked his parole for a minor violation, and that
13 this caused him to return to prison where he suffered "serious psychological pain." He
14 seeks one million dollars in damages.

15 The United States Supreme Court has held that to recover damages for an
16 allegedly unconstitutional conviction or imprisonment, a section 1983 plaintiff must
17 prove that the conviction or sentence has been reversed on direct appeal, expunged by
18 executive order, declared invalid by a state tribunal authorized to make such
19 determination, or called into question by a federal court's issuance of a writ of habeas
20 corpus. *Heck v. Humphrey*, 114 S. Ct. 2364, 2372 (1994). A claim for damages arising
21 from a conviction or sentence that has not been so invalidated is not cognizable under
22 section 1983. *Id.*

23 Plaintiff seeks money damages for actions by Defendants that led to his
24 confinement in prison on a parole violation. When a state prisoner seeks damages in a
25 section 1983 suit, the district court must consider whether a judgment in favor of the
26 plaintiff would necessarily imply the invalidity of his confinement; if it would, the
27 complaint must be dismissed unless the plaintiff can demonstrate that the conviction or
28 sentence has already been invalidated. *Heck*, 512 U.S. at 487. It is clear from the

1 complaint that the revocation of Plaintiff's parole, and his consequent confinement, have
2 not been invalidated. Therefore, he fails to state a cognizable claim under Section 1983,
3 and his complaint must be dismissed. *See Trimble v. City of Santa Rosa*, 49 F.3d 583,
4 585 (9th Cir. 1995) (claims barred by *Heck* may be dismissed sua sponte without
5 prejudice).

6 CONCLUSION

7 For the reasons set out above, this action is DISMISSED without prejudice. In
8 light of this ruling, Plaintiff's motion for appointment of counsel (docket number 3) is
9 DENIED. Plaintiff's application for leave to proceed in forma pauperis (docket number
10 2) is GRANTED.

11 The Clerk shall close the file and enter judgment.

12 IT IS SO ORDERED.

13 DATED: April 24, 2012



14
15 JEFFREY S. WHITE
16 United States District Judge
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VALDEZ BLACKMON,
Plaintiff,

Case Number: CV12-00961 JSW

CERTIFICATE OF SERVICE

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION et
al,


Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 24, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Valdez Blackmon
P.O. Box 213
Palo Alto, CA 94301

Dated: April 24, 2012


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk